

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 02-0541P**

**Use Tax**

**For Calendar Years 1999, 2000, and 2001**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE(S)**

**I. Tax Administration – Penalty**

**Authority:** IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

**STATEMENT OF FACTS**

Taxpayer was audited for calendar years 1999, 2000, and 2001. Upon audit it was discovered that the taxpayer failed to remit use tax on sixty-eight percent (68%), seventy-five percent (75%), and ninety-six percent (96%) of its non-taxed taxable purchases for calendar years 1999, 2000, and 2001 respectively.

Taxpayer requests abatement of the penalty because this was not taxpayer negligence but a misunderstanding of Indiana Use Tax law. The year 2000 had no other liability with the exception of the extended warranty issue and the prior audit for 1993 through 1996 did not address the extended warranty issue.

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**DISCUSSION**

Taxpayer protests the penalty assessed and states that it has attempted to pay its use tax liability and was not aware that tax was due on its extended warranty sales.

Information Bulletin #2 clearly states that the warranties that contain the right to have property supplied in the event it is needed are not subject to sales tax. However, any parts or tangible personal property supplied pursuant to this type of agreement are subject to use tax.

45 IAC 15-11-2(b) states, "Negligence, on behalf of the taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer."

Taxpayer has not provided reasonable cause to allow the department to waive the penalty.

**FINDING**

Taxpayer's protest is denied.